

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

In Re:

Refer Reply To:
CC:PSI:B04
PLR-151448-13

Date:
June 3, 2014

Legend

Grantor	=
Spouse	=
Trust 1	=
Child 1	=
Child 2	=
Child 3	=
Attorney	=
Date 1	=
Date 3	=
Year 1	=

Dear :

Facts

This letter responds to your authorized representative's letter of December 20, 2013 requesting an extension of time pursuant to § 2642(g) of the Internal Revenue Code and § 301.9100 of the Procedure and Administration Regulations to allocate Spouse's GST exemption to a trust.

The facts and representations submitted are summarized as follows: On Date 1, Grantor established an irrevocable trust (Trust) for the benefit of Child 1, Child 2, Child 3, and their descendants.

Trust provides that upon Grantor's death, the trustees are to divide Trust into three equal shares, one share for Child 1, one share for Child 2, and one share for Child 3.

Section 4 of Trust provides that while Grantor is alive, the trustees may distribute to or spend for the benefit of any one or more of the Donees as much of the net income and principal as the trustee, in their sole discretion, deem necessary or desirable to provide their proper health, support and maintenance in reasonable comfort.

Section 5, paragraph A. 1. (a) provides that the trustee may distribute for the benefit of any one or more beneficiaries consisting of the child for whom the share was established or any of the child's descendants as much of the net income and principal, as the trustees, in their sole discretion, deem necessary or desirable to provide for their proper health, support, education and maintenance in reasonable comfort. At the death of a child, until any beneficiary attains the age of 21, the trustees are to distribute as much of the net income as the trustees, in their sole discretion, deem necessary for a beneficiary's proper health, support, education and maintenance. All accumulated income is to be added to principal. The trustees are to distribute one-third of the principal of a beneficiary's share to them when they attain 25. One-half of the principal of a beneficiary's share is to be distributed to a beneficiary when the beneficiary attains the age of 30, and the balance of a beneficiary's share is to be distributed to a beneficiary when the beneficiary attains the age of 35.

Attorney prepared and timely filed Grantor and Spouse's Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns reporting the Year 1 transfers to Trust. Grantor and Spouse elected to gift-split on their Forms 709. Thus, Grantor and Spouse each reported half of the gifts made to Trust on their respective returns. Grantor and Spouse had intended for Trust to have a zero inclusion ratio. However, Attorney allocated the exemption amount for the entire value of the combined gifts to Trust on Grantor's return and no exemption was allocated on Spouse's return. Attorney died on Date 3. The error was discovered when Attorney's files were transferred to another attorney.

You have requested an extension of time to allow Spouse to make an election under § 2642(g)(1) to allocate GST exemption to the transfers to Trust in Year 1, effective as of the date of the transfers to Trust.

Law and Analysis

Section 2513(a)(1) provides that a gift made by one spouse to any person other than his spouse shall be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. Section 2513(a)(1) only applies if both spouses have signified their consent to the application of this section in the case of all such gifts made during the calendar year by either while married to the other.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a), as in effect for the year at issue, provided that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor. Section 2631(b) provides that any allocation under § 2631(a), once made, shall be irrevocable.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to property transferred during the transferor's lifetime, other than in a direct skip, is made on Form 709.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer, the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)).

Section 2642(g)(1)(A) provides that the Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that, under § 2642(g)(1)(B), the time for allocating GST exemption to lifetime transfers is to be treated as if not expressly prescribed by statute and taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or advise the taxpayer to make, the election.

Section 301.9100-3 provides the standards used to determine whether to grant an extension of time to make an election whose date is prescribed by a regulation (and not expressly provided by statute). In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an allocation described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Spouse is granted an extension of time of 120 days from the date of this letter to allocate Spouse's available GST exemption to the Date 1 transfers to Trust. The allocations will be effective as of the date of the transfers to Trust and the value of the transfers to Trust as determined for federal gift tax purposes will be used in determining the amount of Spouse's GST exemption to be allocated to Trust.

The allocation should be made on supplemental Form 709 and filed with the Cincinnati Service Center at the following address: Internal Revenue Service, Cincinnati Service Center – Stop 82, Cincinnati, OH 45999. A copy of this letter should be attached to the supplemental Form 709.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Except as specifically ruled herein, we express or imply no opinion on the federal tax consequences of the transaction under the cited provisions or under any other provisions of the Code. Specifically, we are not ruling on whether the trust will have a zero inclusion ratio as a result of the allocation of Spouse's GST exemption to the transfers to the trust. The rulings in this letter pertaining to the federal estate and/or generation-skipping transfer tax apply only to the extent that the relevant sections of the Internal Revenue Code are in effect during the period at issue.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

By: _____
Lorraine E. Gardner, Senior Counsel
Branch 4
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures
Copy for section 6110 purposes

cc: